



# **Palm Beach Townhomes**

**December 10, 2009  
(Item 66)**

**Robert M. Brown, Director  
Environmental Resource Regulation Department**

# William Donner Property



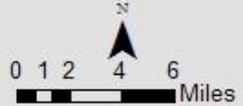
-  PROJECT AREA
-  COUNTY LINES
-  ROADS



Map made by: Lynn J. Cox  
Environmental Resource Regulation  
Map Date: December 9, 2009  
Imagery: 2004-2005 DOQQ, Natural Color, 1mtr



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# William Donner Property



Intracoastal  
Waterway

SR 11A

Atlantic  
Ocean

 PROJECT AREA



Map made by: Lynn J. Cox  
Environmental Resource Regulation  
Map Date: December 8, 2005  
Imagery: 2004-2005 DOQQ, Natural Color, 1mtr



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# William Donner Property



 Property Boundary



Map made by: Lynn J. Cox  
Environmental Resource Regulation  
Map Date: December 8, 2009  
Imagery: 2007 Palm Beach County Half Foot  
Natural Color Aerial Photography



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# Palm Beach Townhomes

- Multi-family residential development (2.58 acres)
- Located entirely within existing privately owned submerged lands within Lake Worth Lagoon in Palm Beach County
- Proposed filling of 2.03 acres of submerged lands to create uplands.
  - The remaining 0.55 acre of seagrass habitat not proposed to be filled, but anticipated to be secondarily impacted by the project in total.

# Palm Beach Townhomes Chronology

- June 19, 2007 – Application submitted
- Request for Additional Information (RAI) letters sent July 18 and December 21, 2007
- Ongoing staff coordination with applicant's representatives through telephone calls, emails, office-meetings, teleconferences and site inspections
- November 13, 2009 - Applicant's attorney confirmed that no additional information would be submitted to address outstanding issues

## Palm Beach Townhomes Basis for Denial

- Insufficient information to satisfy Sections 4.0, 5.0, and 9.0 of the District's Basis of Review
- Specifically, the Applicant has not demonstrated:
  - That elimination & reduction criteria regarding impacts to wetlands and other surface waters will be met
  - That the project will offset adverse direct and secondary impacts
  - That adverse impacts to fish & wildlife and their habitats will not occur

## Palm Beach Townhomes Basis for Denial, cont.

- Applicant has not demonstrated that:
  - The project is not contrary to the public interest
  - Adverse cumulative impacts to the C-16 and Intracoastal Basin will not occur
  - Adverse water quality impacts to Lake Worth Lagoon will not occur
  - The legal right to file an application to fill the site from a proprietary perspective

# William Donner Property



-  Property boundary
-  -10 blades seagrass/square meter
-  10 to 30 blades seagrass/square meter
-  -200 blades seagrass/square meter



Map made by: Lynn J. Cox  
Environmental Resource Regulation  
Map Date: December 8, 2009  
Imagery: 2007 Palm Beach County Half Foot  
Natural Color Aerial Photography

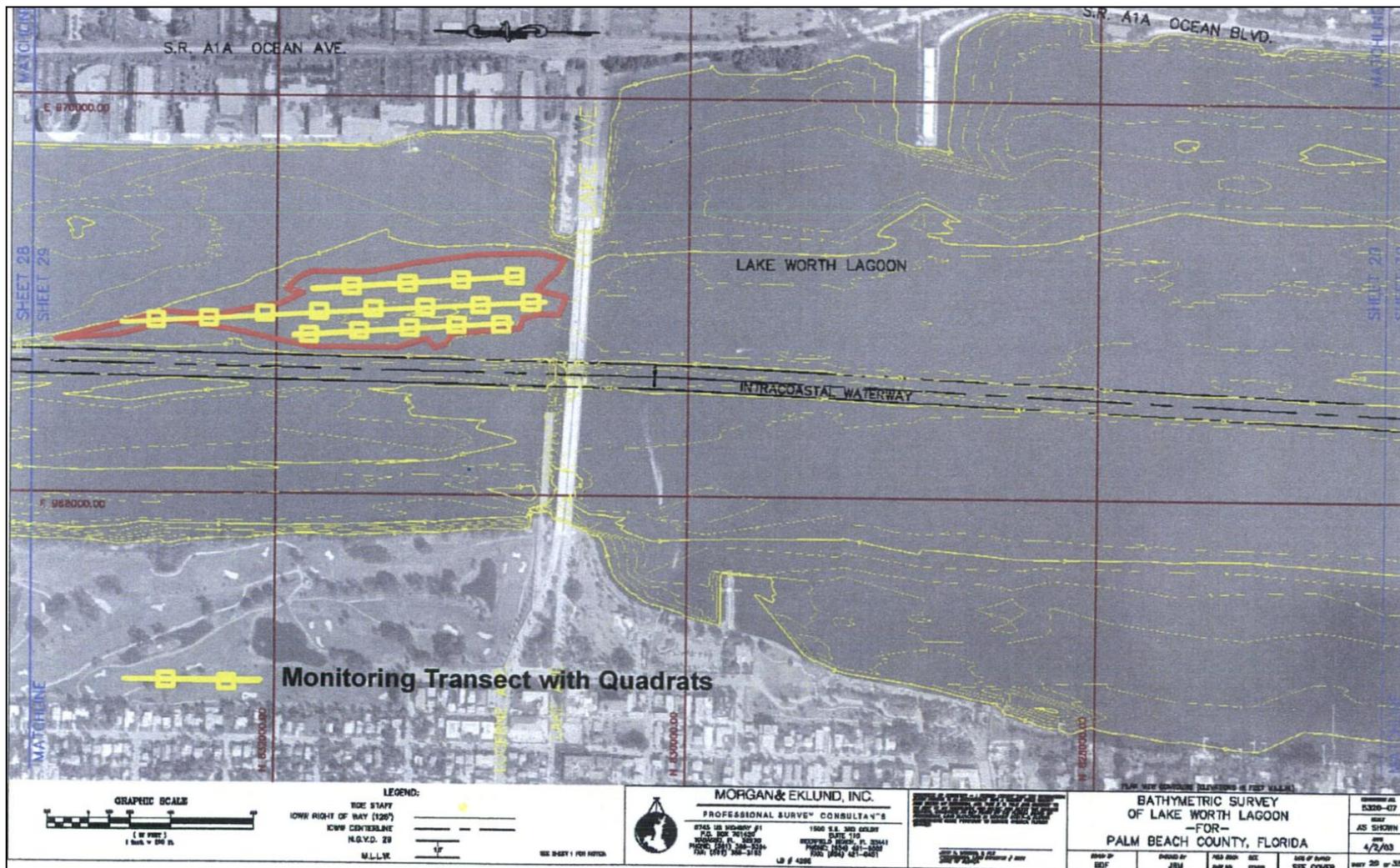


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# Palm Beach Townhomes Proposed Off-Site Mitigation



## **Palm Beach Townhomes**

# **Executive Director's Recommendation**

Deny Environmental Resource Permit Application 070619-12 for a multi-family residential project known as Palm Beach Townhomes, in accordance with Section 40E-1.608, F.A.C. The applicant has not provided reasonable assurance the project meets the Conditions for Issuance of Permits listed in Sections 40E-4.301 and 40E-4.302, F.A.C.; Sections 4.0, 5.0 and 9.0 of the Basis of Review; Additional Criteria for activities in Surface Waters and Wetlands listed in Chapter 373.414 (1), Florida Statutes; Water Quality criteria in Chapter 64-2 and 62-340, F.A.C.

# Recommended Revisions

- Implement practicable design modifications to reduce and/or eliminate adverse wetland and water resources
  - Demonstrate that the project:
    - Will not adversely impact the value of functions provided to fish and wildlife and listed species by seagrass habitat and surface waters.
    - Will not adversely affect the quality of receiving waters such that WQ standards are not met.
    - Will not cause unacceptable adverse direct, secondary and/or cumulative impacts to the water resources, including fish & wildlife & their habitats.
    - Will be capable of being performed and of functioning as proposed.
    - Will be not be contrary to the public interest.
- Will provide a viable seagrass mitigation plan that offsets the adverse impacts to the functions of seagrasses and seagrass habitat and meets the requirements of the Basis of Review.

# Recommended Revisions Cont.

Potential revisions to result in a permittable project:

- Reducing amount of filling of submerged lands/seagrasses and seagrass habitat
- Mitigation plan that implements all or part of a plan that provides regional ecological value and greater long term ecological value than the area of wetland or other surface waters to be adversely impacted)
- Plan that addresses the potential cumulative impacts

## Statutory Requirements for a Permit Denial

- Pursuant to Section 373.414(9), Fla. Stat., “a notice of intent to deny or a permit denial based upon this section shall contain an explanation of the reason for such denial and an explanation, in general terms, of what changes, if any, are necessary to address such reasons for denial.



# **Request Authorization to Seek Declaratory Judgment**

**December 10, 2009  
(Item 73)**

**Robert M. Brown, Director  
Environmental Resource Regulation Department**

## Staff Recommendation

Authorize staff to file suit to Seek Declaratory Judgment about Florida property law as it applies to an application to bulkhead and fill in privately owned submerged land located in Lake Worth Lagoon, Palm Beach County, Florida.